The Ombudsman's Review

This review marks the end of my ninth year as Ombudsman. I will reflect on some areas of concern and public interest.

Access to Information

Since 1995, Government's Code on Access to Information ("the Code") has been in force as an administrative guide to Government departments in their pursuit of open and transparent government. The objective of the Code is to make available as much information as possible to the public, unless there are valid reasons – related to public, private or commercial interests – not to do so. While complaints about non-compliance or misapplication of the Code have not been particularly numerous (15 in 2007/08), some cases have brought into sharp focus signs of misunderstanding, or even ignorance, of the Code among Government departments.

In several cases, the departments refused requests for information, either without providing any reason or with reasons not specified in the Code. In one or two cases, even the Access to Information Officer showed utter ignorance about the provisions of the Code.

The Code is the principal safeguard against improper withholding of Government-held information from the public. It is, therefore, of paramount importance that all departments are conversant with its provisions. We have drawn the attention of the Administration to the ignorance or lack of understanding of the Code among some civil servants and urged for promotion of awareness and more extensive training.

Conflicting Policies

I applaud the Administration for introducing legislation against unsolicited electronic messages to control the rampant sending of "junk" messages by telephone, fax or email. However, similar protection is not available against non-electronic "junk" mail. The Hongkong Post Circular Service delivers unaddressed circular mail, largely commercial advertisements, on a massive scale, which many recipients find annoying. This is an incident

which clearly suggests that Government's right hand is working in contradiction to its left. I, therefore, urge the Administration to examine this anomaly.

Lack of Monitoring Mechanism

A case about illegal burial in the New Territories revealed that Government has a policy of generally allowing refurbishment or reconstruction of graves built before a certain date. However, not having surveyed such graves at the time, the authorities have difficulty ascertaining whether a grave is new and illegally constructed or old but refurbished or reconstructed, as allowed under the policy.

This case illustrates the importance of having a proper mechanism to monitor the implementation of any policy. The Administration should take reference and avoid similar pitfalls.

Lack of Coordination

In my report for 2005/06, I commented at length on the issue of lack of coordination among Government departments in taking enforcement action, particularly in abatement of environmental nuisances – a reflection of the absence of legislation, policy or *esprit de corps* among the departments concerned to tackle such nuisances specifically and fully. The situation has not improved much in the last couple of years. I have, therefore, initiated two direct investigations, in July and November 2007 respectively, into how departments operate to deal with the long-standing issues of water seepage complaints and street management (including the proliferation of promotional activities on busy streets).

I maintain the view that departments must take on a broader prospective: however many departments may be involved, it is still just one and the same Government to members of the public. Such buck-passing among departments can only give the public an impression that they are shirking their responsibilities. In the final analysis, this will undermine Government's credibility.

Quality of Service vs Availability of Resources

From time to time, Government departments are found unable to meet public demand for essential services, notably telephone enquiry service, as a result of staff shortage. Of course, I appreciate the need for economy, especially in times of financial constraint. However, the Administration should not overlook or underestimate

the importance of support for such key "front-line" customer services. Here, let me quote Ms Ann Abraham, Parliamentary and Health Service Ombudsman of UK: "All public bodies must, and should, spend public money with care. However, finite resources should not be used as an excuse for poor service or administration."

Requirement of *Prima Facie* Case

Occasionally, complainants are dissatisfied with my decision not to take up their case. My reason is simply that we need, first and foremost, to ascertain whether there is a *prima facie* case to warrant investigation. Complainants must give such basic facts as the organisation and the matter for grievance, details of time and any persons involved. I cannot help complainants who are economical or reticent with the facts. It is not the function or practice of my Office to go witch-hunting on empty allegations.

Jurisdictional Review

I have completed the review of my jurisdiction and forwarded proposals to the Administration. In Part One of my review which was submitted to The Administration in November 2006, I have re-examined the criteria for including public bodies in The Ombudsman's purview and recommended a few additions. I have also revisited the legislative intent for some of the restrictions on investigative powers. The Administration is still studying my recommendations and consulting relevant parties and the Legislative Council.

I have also presented to the Administration my Part Two report in November 2007, devoted to surveying trends for development in ombudsmanship worldwide and the implications those could have on the ombudsman system in Hong Kong.

Hopefully, this would set the scene for possible changes in the years to come and contribute to more comprehensive and successful operation by future Ombudsmen.